Supreme Court, U. S.
FILED
JUN 14 1976
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1879

BRUCE WIDENOR HAUPT,

Appellant

v

MONTGOMERY COUNTY BAR ASSOCIATION, INC.,

Appellee.

ON APPEAL FROM THE COURT OF APPEALS OF MARYLAND

JURISDICTIONAL STATEMENT

BRUCE W. HAUPT
Suite 505, Washington Building
1435 G Street, N.W.
Washington, D.C. 20005

Pro Se

Washington, D.C. • CLB PUBLISHERS' • LAW PRINTING CO. • (202) 393-0625

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JURISDICTIONAL STATEMENT

Appellant appeals from the judgment of the Court of Appeals of Maryland, entered on 15 March, 1976; with Appellant's request for clarification of the Opinion and Order of the court denied on 19 March, 1976, denying Appellant attorneys' fees, expenses and costs necessary to the litigation which terminated as to the first of the two matters in the attorney grievance proceeding, that is the subject matter of this appeal, in his favor. Appellant further appeals from the same judgment

entered on 15 March, 1976, with Appellant's request for clarification of same denied on 19 March, 1976, as to the second matter, suspending Appellant from the practice of law in the State of Maryland for 30 days, commencing 16 April, 1976. Appellant submits this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial questions are presented.

OPINION BELOW

The Recommendations of the Circuit Court for Montgomery County, Maryland, filed on 24 November, 1975 were adopted, except as to the recommended disposition and same was incorporated into the Opinion and Order of the Court of Appeals of Maryland on 15 March, 1976 which is set forth in the Appendix, *infra*, at pp. 1a. The Opinion and Order of the Court of Appeals of Maryland is reported in Md. ; 353 A.2d 629 (1976).

JURISDICTION

The judgment of the Court of Appeals of Maryland was entered on 15 March, 1976 and notice of appeal was filed in that court on 14 June, 1976, and is set forth in the Appendix, *infra*, at pp. 33a. The jurisdiction of the Supreme Court to review this decision by appeal is conferred by 28 U.S.C. Section 1257(2). The following decisions sustain the jurisdiction of this Court to review the judgment on appeal in this

case: *In Re Griffiths*, 413 U.S. 717 (1973); *Bacon v. Texas*, 163 U.S. 207 (1896); *Sultan Ry. & Timber Co. v. Dept. of Labor and Industries of the State of Washington*, 277 U.S. 135 (1928) and *Lathrop v. Donohue*, 367 U.S. 820 (1961).

STATUTES OR COURT RULES INVOLVED

Maryland Rule of Procedure, BV 15(d). [Costs]

"d. Bad Faith. - The provisions of section b of Rule 604 (Bad Faith - Unjustified Proceeding - Delay) apply to proceedings under this Subtitle."

Maryland Rule of Procedure, Rule 604 b. Bad Faith - Unjustified Proceeding - Delay.

"In an action or part of an action, if the court finds that any proceeding was had (1) in bad faith, (2) without substantial justification, or (3) for purposes of delay the court shall require the moving party to pay the adverse party the amount of costs thereof and the reasonable expenses incurred by the adverse party in opposing such proceeding, including reasonable attorneys' fees."

QUESTIONS PRESENTED

1. As to the Juvenile matter, whether Maryland Rule of Procedure, BV 15(d) which sets forth the requirements, but not the procedure for the recovery of attorneys' fees, expenses incidental to attorney disciplinary proceedings and costs thereof, subsequent to dismissal of charges against Appellant and after trial thereof, arbitarily and capriciously deprives Appellant

of his rights to liberty, property, privacy and due process contrary to the First, Fifth, Ninth and Fourteenth Amendments to the Constitution of the United States, and

2. As to the Clem matter, whether Appellant's rights to due process and a fair trial were violated under the Fifth and Fourteenth Amendments, when the court, thru mechanical operation of an evidentiary rule and without weighing the "quality" of the evidence presented against Appellant in the attorney disciplinary proceeding sanctioned Appellant for not testifying and whether the findings and conclusions of the court were so abstract and ambiguous as to arbitrarily and capriciously sanction Appellant without articulating the basis therefore in violation of due process.

STATEMENT OF THE CASE

This case presents for review portions of two cases in an attorney disciplinary proceeding certified together to the Court of Appeals of Maryland by the Montgomery County Bar Association, Inc. and tried together by Order of the Court of Appeals of Maryland by a 3 judge panel in the Circuit Court for Montgomery County, Maryland.

In the first of the two cases the charges were dismissed based on the recommendation of the panel which was adopted in toto by the Court of Appeals of Maryland. It is before this Court for review because the Court of Appeals of Maryland refused to award Appellant attorneys' fees, expenses and costs necessary to the proceeding, which Appellant and his trial

counsel, Gary H. Simpson, Esq., felt were necessary in order to present a well prepared case. It is a case of first impression in both the Court of Appeals of Maryland and in this Court.

In the second case, which was in no way factually related or connected with the first case and which was tried with the first case over the objections and motion for severance of Appellant by the same 3 judge panel, Appellant offered no testimony upon the conclusion of Appellee's case in chief. The panel, without weighing the "quality" of the evidence offered by the Appellee, held that since the Appellant chose not to contradict any evidence offered, that the Appellee, Montgomery County Bar Association, had substantiated the charges in toto, whereupon the Circuit Court for Montgomery County recommended that Appellant be suspended from the practice of law for a period of one year. The Recommendations of the Circuit Court for Montgomery County, Maryland were then adopted, by the Court of Appeals of Maryland, except that the penalty or sanction was reduced by said court from one year to thirty days. See Appendix, pp. 1a.

The Juvenile Matter

With reference to the first case, known by stipulation between the parties as the Juvenile matter, which was dismissed, Appellant requested the award of attorney fees and cost for investigations and depositions, most of which were not used in evidence but which ultimately,

were used solely for the purpose of discovery and case preparation. This case involved allegations of sexual advances made by Appellant against his 17 year old female ward. It was the hope of Appellant, that sufficient grounds could be shown, thru the depositions and investigations, to have the Appellee Bar Association withdraw the charges and in this regard, Appellant and his trial counsel fully disclosed, in good faith, the results of their investigations to Appellee. Appellant notes that testimony offered in trial by witnesses who were deposed was essentially the same testimony as obtained thru the depositons and investigations. Appellant further notes that all key witnesses were either deposed pretrial or conferred with personally or by telephone or both, by both Appellant and Appellee. It is further suggested that a complaint alleging sexual advances by an attorney is or should be inherently suspect and subject to corroboration, of which there was none. Additionally, in this type of complaint it is necessary, as a practical matter, to prove one's *innocence* which is extremely difficult and very expensive. Appellant suggests that this was in fact done, leaving the court little alternative but to dismiss the charges.

Appellant requested said award pursuant to Maryland Rule of Procedure BV 15(d) (hereinafter cited as M.R.P.), see Appendix pp. 34a. This rule refers one to another general Maryland rule, M.R.P. 604(b), see Appendix, pp. 34a, which permits a party to recover attorneys' fees, reasonable costs of an action and expenses incidential thereto where the court is conviced that the proceeding was had in either, bad faith or without substantial justification. Recovery is also

permitted if a proceeding is had for the purposes of delay, however, this is not alleged by Appellant. Appellant, after doing substantial research was unable to discover any Maryland precedent where the rule, or its former exact equivalent BV10(d) was ever evoked in an attorney disciplinary proceeding. While the former Rule was only added to the Rules in 1970, the Court apparently had the same power under the common law, pursuant to Article 5 of the Maryland Declaration of Rights, (See Appendix, pp. 36, 37a) prior thereto, which was never used. See *Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U.S. 240, 95 S. Ct. 1612, 1618 (1975). Appellant was further advised by many members of the bar that *no court* was ever going to make such an award in this State, because it would by implication chastize the bar association bringing the charges with the ultimate possible result that the judges responsible for the award would lose the support of the bar association and not be relected.

Appellant thereupon summonsed the members of the Montgomery County Grievance Committee to a deposition with the advance warning that he would inquire into the specific reasons and facts that caused them to certify the Juvenile matter for trial. Most of the members responsed and appeared, but only the Chairman was deposed. When any questions were asked of the committee chairman which delt with the reasons or basis for the certification of charges for trial, he was instructed not to answer the question due to the fact that the thought processes of the committee and how or why committee members acted as they did was privileged and not a proper matter for discovery, even under M.R.P. BV15(d). See Appendix, pp. 24a. The

objections were sustained by the chief panel judge immediately thereafter and the remainder of the panel was thereupon released from summons by Appellant, it being obvious to the Appellant that he would not be able to show either bad faith or an unjustified proceeding thru the Montgomery County Grievance Committee members themselves. Appellant hoped that the evidence adduced at trial would suffice. With regard thereto, the panel, in recommending dismissal of the charges noted, at pp. 631 of the reporter:

> Without going into particular detail on each and every one of the episodes related and each and every portion of the testimony adduced, suffice it to say that, taking into consideration the *patent (Emphasis ours)* inconsistencies and discrepancies in the Juvenile's testimony and the lack of corroboration as to many of the material elements of her story, together with the denials and explanations of the respondent corroborated by independant, disinterested witnesses in many particulars, the majority of the panel is not persuaded that the petitioner has proven the specifications charged by the clear and convincing evidence required by the law applicable to disciplinary proceedings. Accordingly, the panel recommends that the charges arising out of the Juvenile's episode be dismissed.

Appellant is not aware of any former reported cases in the State of Maryland where disciplinary charges that have been tried have ever been dismissed against an attorney respondent and Appellant further notes that the Maryland Court of Appeals is the oldest appellate court in the United States.

At the conclusion of the case, Appellant moved for attorneys' fees, expenses and costs in the Circuit Court

for Montgomery County, Maryland and was advised by the chief panel judge that it was not an appropriate time to move for same, and so Appellant reserved this right.

Appellant also moved for attorneys' fees, expenses and costs in the Court of Appeals of Maryland, and same were denied, the court considering both the Appellee's motion to tax costs and the Appellant's motion to tax costs and for attorneys' fees in the amount of $15,000.00 together, holding that both parties should pay their own costs and that Appellant's attorneys' fees would be denied. No portion of the Juvenile matter is appealed from except the refusal to award attorneys' fees, expenses and costs. Federal questions are discussed after Clem.

The Clem Matter

Appellant notes that the second case, known as the Clem matter, is probably a more appropriate matter for certiorari, than appeal. It is treated as an appeal, however, because both cases were tried and later argued before the Court of Appeals of Maryland as one matter. Appellant is further unaware of any Rule of Court for the separate handling of such a situation, indeed Rule 12(4) implies it is not necessary.

The case involved a dispute that arose between Appellant, who was representing Mr. Clem's wife, and Mr. Clem, who was represented by counsel, that erupted while Appellant was at the wife's temporary residence, her mother's home, when Mr. Clem attempted to take his "wifes" car and in the process thereof almost ran over Appellant, who then pursued

and confronted Mr. Clem relative to the assault with an automobile. Ultimately, a discussion took place with Mr. Clem's parents about the domestic situation into which Mr. Clem attempted to inject comments. Mr. Clem was advised by Appellant that Appellant could not communicate with him about the divorce so long as he was represented by counsel, whereupon Mr. Clem insisted on discussing reconciliation and Appellant suggested Mr. Clem might want to start by returning the car he had just taken, which was returned. A complaint was subsequently filed, apparently at the suggestion of Mr. Clem's attorney, with the Montgomery County Bar Association grievance committee.

Appellant originally noted that no causes of action were stated in Appellee's petition for disciplinary action with regard to the allegations in the Clem matter. Appellant does not now believe that it is necessary to restate those allegations, as they may be found in the Appendix at pp. 2, 3a. The relevant matters to the appeal in the Clem proceeding consist, for the most part, of the manner in which Appellant was found culpable under the Code of Professional Responsibility.

The panel in recommending the suspension of Appellant noted at pp. 632 and 633 of the reporter:

> Turning now to the Clem matter, the situation is entirely different. In this matter the evidence presented by the petitioner as regards the happening of the episode and the part played by the Clems and the respondent was undisputed by the respondent. He presented no testimony in opposition to the petitioner's evidence . . . . None of these facts were disputed by the respondent and the panel concludes that the respondent's conduct throughout this episode was highly improper and

> specifically in violation of Cannons 1 and 7 of the Code of Professional Responsibility and Disciplinary Rules 1-102 (A), 7-102 (A)(8) and 7-104 (A)(1). . . . .

It is readily apparent that the Appellant was disciplined, based on the quantity as opposed to the quality of the Appellee's evidence, as well as on the mechanical operation of an evidentiary rule; specifically that there is a need, especially in an attorney disciplinary proceeding for the respondent to contradict the evidence, regardless of how inconsistent it may be, by personally testifying, in order to have the charges dismissed. If this is so it is without regard for the constitutional issues raised in the cases of *Spevack v. Klein*, 385 U.S. 511 (1967) and *Chambers v. Mississippi*, 410 U.S. 284 (1973).

Appellant notes that the complainant, Mr. Clem and one of the witnesses called to corroborate the high speed chase aspect of Mr. Clem's testimony, a Mr. Weekley, contradicted each other on a very important point, indicating to the Appellant and his trial counsel that the corroborating witness was giving fabricated testimony (at the suggestion of Mr. Clem) thus destroying any credibility either witness may have had. See, Appendix pp. 17-20a.

Assuming, *arguendo*, that their credibility was not even blemished, Appellant was not advised, nor were other members of the bar, or the public as to what specific conduct he was being sanctioned for. Was it for speeding or the assault and battery or both under D.R. 7-102 (A)(8)? Was it for telling Mr. Clem that if he wanted to get his wife back, after he had either waived his right to counsel, or to the presence of counsel, or

discharged his counsel by implication, that common sense indicated he should return "her" car that he had just taken, under DR 7-104(A)(1)? Is speeding a new cause of action in an attorney disciplinary proceeding? When a court disciplines an attorney is it in the public interest? What public interest is served here? Does or should the public interest permit disciplinary proceedings to be brought for actions like speeding?

Appellee conceeded in oral argument in the Court of Appeals of Maryland that it was very likely that none of the individual offenses or infractions committed by the Appellant in the Clem matter amounted to a cause of action under the Canons, but that the court should consider the cumulative effect of all of the individual offenses in reaching its decision. Judge Irving Levine then asked the attorney for the Appellee how much three times zero was, as there were three matters under consideration, but Appellee's counsel insisted that the court should consider the cumulative effect of the actions. Appellant finds no basis in law or public policy that would permitting this, but since the opinion of the court was never clarified there is no way to know for what specific acts or series of acts he was sanctioned.

The Federal Questions

Prior to 15 March, 1976, Appellant petitioned for a clarification of the Order of the Court of Appeals of Maryland which was denied without comment on 19 March, 1976. See Appendix, pp. 12-14a. In that petition, Appellant raised federal constitutional questions relevant to the award of fees, expenses and costs in the

Juvenile matter. Because of the failure of M.R.P. BV 15(d) or M.R.P. 604(b) to articulate the procedure by which attorneys' fees, expenses and costs could be recovered in an attorney disciplinary proceeding and because of the total absence of precedent in the area of attorney fee awards, in disciplinary proceedings, Appellant had no opportunity or reason to anticipate a complete denial of same by the Court of Appeals of Maryland and therefore Appellant had no real opportunity to raise the appropriate federal questions in the Juvenile matter prior thereto. As to the Clem matter, the federal constitutional question raised in *Spevack v. Klein*, supra, was initially raised in the Circuit Court for Montgomery County, Maryland in response to Appellee's motion to depose Appellant. Appellant gave the deposition, however, when his counsel was informally advised in chambers by the chief panel judge that taking the 5th Amendment wouldn't do Appellant any good. Appellant believes that at this point the deposition issues are moot. Upon the completion of the Appellee's case in the Clem matter, Appellant's counsel advised the court that Appellant would elect not to testify. When Appellee argued in final argument that Appellant had no right to sit silent in an attorney disciplinary proceeding, and implied that Appellant had something to hide by not testifying, Appellant's counsel then offered to permit Appellant to be called by the court as the court's own witness or by the Appellee. No one elected to have the Appellant called.

Before the Court of Appeals of Maryland, *Spevack v. Klein*, supra, was argued by Appellant on pp. 11 of Respondent's Exceptions to the Findings of Fact and Recommendation of the Circuit Court for Montgomery County, Maryland, noting:

> Further, it is blatently apparent that the Petitioner urged the court to sanction the Respondent . . . by noting that in an attorney disciplinary proceeding an attorney has no right to refuse to testify. This is not true. Respondent suggest that while it is the teaching of *Spevack v. Klein,* 385 U.S. 511 (1967), that an attorney can evoke the 5th Amendment in a disciplinary proceeding and remain silent without suffering any penalty for such silence, such as the threat of disbarment, or the imposition of any sanction which makes the assertion of the privilege costly, this Honorable Court need never reach this issue because of Maryland's Statutory Adverse Witness Rule, until the Bar Association, or henceforth, the Attorney Grievance Commission calls the Respondent and he or she refuses to testify. See Statutes and Court Rules, pp. 36a.

By this, Appellant did not mean that there was no issue of his remaining silent, but only that under existing Maryland Rules before the Appellee could make anything out of the silence, that Appellee would first have to exhaust all rights under State law to call the respondent, which were not done in this case.

Appellant raised the *Chambers,* supra, issue of the mechanical operation of evidentiary rules on pp. 12 of the same Exceptions without reference by name to *Chambers,* noting:

> The court, apparently, rather than choosing to sanction the Respondent for "failing to testify" made the mistake of accepting all other testimony as gospel, without making any effort to go beneath the surface, thus giving the same effect to Petitioner's arguments.

The Court of Appeals of Maryland merely adopted the holding of the Circuit Court for Montgomery

County, Maryland without comment on any of the federal issues raised in the Clem matter.

Justiciable Issue

Appellant notes that he has completed his thirty days suspension, however, the fact that he was suspended remains on his record and by comity or statute, may affect his right to practice in the District of Columbia, where he is also a member of the bar and presently maintains his office. Appellant further notes that the D.C. Court of Appeals was advised of his suspension in Maryland. Appellant further notes that the action of the Court of Appeals of Maryland in sanctioning him will affect future applications to foreign bars, including the Bar of this Court.

THE QUESTIONS ARE SUBSTANTIAL

I.

It is a violation of due process and of the Ninth Amendment to require an attorney in an attorney disciplinary proceeding, when charges are dismissed against him or her, to show bad faith or unjustified proceeding by the petitioner to recover attorneys' fees, expenses incidential to the litigation and costs and then fail to set out procedures articulating when such bad faith or unjustified proceeding can be shown and in addition thereto, to prohibit or ignore attempts made by said attorney to show same and to further deny same without comment.

Appellant believes the above question can be answered by good common sense.

Aside from being a violation of one's common sense, it is obviously a violation of procedural due process. The reason Appellant uses the term "obvious" is due to the principle that embodies the term "due process." While a long string of citations can be used in attempting to define procedural due process, they all embody one common principle. That principle is affording notice and an opportunity to be heard. This means timely notice and a timely opportunity to be heard. While each case stands or falls on its own merits, one example of where procedural due process was absent is *In Re Ruffalo,* 390 U.S. 544 (1968), where this Court determined that there was no way to realistically correct the procedural abuse of advising the respondent that he was subject to disbarment for employing a certain individual after both the respondent and that individual had testified at length on all material facts pertaining to that phase of the case. This Court held that since there was no way to expunge the statements made, a new hearing would have been pointless, whereupon the case was reversed.

In the instant case, there is no specific time set forth under Maryland Rule of Procedure (hereinafter, M.R.P.) BV 15(d) to argue for attorneys' fees, expenses and costs. (Perhaps one reason for this is the absence of any prior reported dismissals in the history of the Court.) No time appears to be the right time and when the argument is finally advanced, fees, expenses and costs are denied without comment by the court, except that each side is to pay their own costs. See Appendix at p. 1a.

The Ninth Amendment, which will be discussed in greater detail under Point 5, can also be used as a matter of sound public policy to reach the conclusion that there was a violation of due process.

II.

Where sanctions against an attorney are made primarily in the public interest and punishment of the attorney is incidental or secondary, the corollary is that an attorney defends himself or herself primarily in the public interest and pecuniary or personal gain, or the right of legal survival is secondary.

Appellant believes that this statement is also a matter of common sense, so long as the first premise holds true.

The principle behind this position is clouded by the legal fiction, if it may be so called, that sanctions are not to be viewed as punishment. This view apparently is attributed to the case of *Ex parte Wall,* 107 U.S. 265 (1883), which is frequently cited for the proposition. The last sentence of the dissent in the instant case further appears to support the premise that disciplinary proceedings are not to be viewed as punishment. See Appendix, pp. 5, 6a. It is apparent, however, that the better view is that disbarment and by implication lesser disciplinary action taken against a lawyer is punishment, even if that is not the primary purpose of the proceeding. *In Re Ruffalo,* supra at 550; *Spevack v. Klein,* 385 U.S. 511, 515 (1967). Whether it is punishment or not, however, it is the public's interest and the profession's interest that are paramount. *Ex Parte Wall,* supra.

If this is true as a matter of principle, then the corollary must be that the interest of the public and the profession are well served when an attorney successfully defends himself or herself in a disciplinary proceeding, for it can only indicate to the public and the profession that there was no infraction of the Code of Professional Responsibility by the attorney respondent. The only other alternatives are that the code needs revision, or that the prosecutor did a poor job, or that insufficient evidence was available to sustain the charges.

The instant case involves a multi-day trial, the record of which costs $2,372.50 to transcribe, with substantial pretrial discovery, by both sides amounting to thousands of dollars, the providing of transportation to and from Florida for the complaining witness and her roommate and girlfriend, another witness for Appellee, who appeared on the cover and inside Penthouse Magazine for ~~April~~ MAY, 1976, by the Appellee, and further substantial investigation by both sides. The Appellee by no means did a poor job in preparation or prosecution of either the Juvenile or Clem matters. Both attorneys for the Appellee were former State's Attorneys with substantial trial experience. Appellant notes that most of the parties efforts and expenses went into the Juvenile matter. Said matter was dismissed for reasons quoted verbatim in the statement of the Case. One can readily and safely conclude that there was ample evidence available for both sides to use and that the court did not err after qualitatively weighing all the evidence offered by both sides in its decision to dismiss.

Accordingly, principle indicates that the interest of the public and the profession were served by the dismissal. It is just as obvious that Appellant was, at

last, benefited by the dismissal as it would be to say that to have sanctioned Appellant would have been punishment. Therefore one can conclude that an attorney defends, primarily in the public interest.

III.

Whether the status afforded attorney disciplinary proceedings is quasi-criminal in nature, and in that respect whether they are unique and should receive unique protection under the 9th and 14th Amendments, where an attorney has charges dismissed.

Many states treat attorney disciplinary proceedings as civil in nature. Maryland is one such State, requiring only a civil burden of proof and allowing the rules of law, evidence and procedure to be those applicable to a trial of civil proceedings in equity. See M.R.P. BV 10(d), Statutes and Court Rules involved at pp. 34, 35a. Yet, *In Re Ruffalo*, supra, at 591, clearly indicates that attorney grievance proceedings are quasi-criminal in nature. *Ruffalo*, supra, had no dissent and only Mr. Justice Stewart took no part in the decision.

However the Court decides to classify attorney grievance proceedings, one thing is clear – they are unique. Again, as a matter of principle and fundamental fairness, the corollary appears to be that attorneys subjected to them, in the public interest, should not have to *personally* assume large monetary and intangible losses where the charges are dismissed after trial. An attorney subjects himself or herself to the possibility of being a respondent in this unique, torturous kind of proceeding, merely by taking the oath of office, so to

speak, and that oath demands that the public, state and country take priority over the personal vanity of the attorney. Why then should public policy not insist, even demand, that one subjected, as a public servant, or officer of the court to monetary and other intangible losses thru such a proceeding, be made whole again, where the public interest and faith in the bar is restored thru dismissal of charges. Of course, little can be done to compensate one for the intangible losses, but the tangible ones should be compensated as a matter of fundamental fairness. This result can also be reached under the Ninth Amendment, which will be discussed under point 5.

IV.

Any statute, or rule of court, which requires the showing of bad faith or unjustified proceeding by an attorney, against whom charges are dismissed after trial in an attorney grievance proceeding, as a prerequisite for the award of attorneys' fees, expenses incidential to the litigation, or costs, is not only inappropriate, but repugnant to the public interest under the 9th and 14th Amendments.

It is the Appellant's understanding that one of the primary goals of our adversial system of justice, in both civil and criminal areas, has been to discourage the litigation of disputes. Thus, plea bargaining is an accepted means of disposition of criminal cases and out of court or in court settlement of civil disputes are not only accepted but encouraged. Certainly one of the reasons for the existence of this principle of dis-

couraging litigation is to reduce the crowded dockets in our countries courts, and maintain the appearance of propriety, order and peacefulness within the community or society.

To require an attorney to affirmatively show that a bar association, grievance commission, or other disciplinary prosecuting authority, that has not only official capacity, but also the blessings of the state, court and bar, has proceeding in going forth with a disciplinary prosecution in bad faith or for unjustified reasons, whatever they maybe, also means that it is necessary to show that other members of the bar, usually of significant standing, wealth and power within the community, are no longer worthy of the sacred trust of that community. Thus, there is great reason to do whatever has to be done to preclude what would or could amount to a public showing of bad faith or underhanded tactics, or dealing, or even the appearance of same. Apparently bar associations, in the past, have been successful in precluding such a showing as no reported opinion has been found in any jurisdiction where fees, expenses and costs have ever been awarded a respondent in an attorney disciplinary proceeding. For similar reasons, there is also great reason to preclude a showing of recklessness, intentional or otherwise, on behalf of a prosecuting authority, in an attorney disciplinary proceeding.

Until the advent of Watergate, most reported disciplinary proceedings, at least in Maryland, were for serious offenses, usually involving fraud, dishonesty or deceit. Until the instant case, there were only two reported State cases involving any sanction short of disbarment and those involved suspensions.

Since Watergate, both consumer groups and bar associations have encouraged the public to report any and all suspected infractions of the Code of Professional Responsibility, complaints and dissatisfactions to bar association grievance committees. There can be no doubt that cases not amounting to legal malpractice but involving everything from fee disputes to personality differences and beyond will and have found their way to the bar association grievance committees. The following is but an example:

> "How To File A Case Against A Lawyer"
> This is the provocative title to an article which appeared on page 38 of the March 17, 1976 issue of the New York Times. For clients who were *unhappy* about their lawyers, the journalist recommended that they purchase a booklet for 25 cents published by the New York Public Interest Research Group advising them how to file a complaint against their attorney. Res Ipsa Loquitur. 1 Legal Malpractice Reporter No. 3 at p. 4, (April 1976).

Now for merely 25 cents (or less) plus postage, an attorney can be put to a gross inconvenience and burden, which the layman is not subjected to, with *absolute immunity* conferred on the complainant.

A lawyer's time is his or her living and source of income. Appellant is unaware of any authority that requires a lawyer to sacrifice his or her time, arbitrarily or capriciously, merely because of his or her status as a lawyer. Such a requirement would further appear to be an invidious discrimination against members of the legal profession. Appellant suggests that to require same is a violation of the equal protection and due process clauses of the 14th Amendment, in addition to the

Ninth Amendment, which will be discussed in point 5. On the other hand the public is entitled to a legal profession that is competent, qualified and honest. The public's needs must thus be balanced against the need's of the attorney and the needs and desires of the profession, all in an era where new problems of honesty and integrity within the ranks of the legal profession have been articulated and brought forcefully to the public's attention. Appellant suggests that beyond this balance, a lawyer certainly has the same right to privacy as any layman.

Appellant believes that it is or should be a fundamental principle that rights and responsibilities are coextensive. A laymen is never subjected to an attorney disciplinary proceeding and with regard to other types of license revocation proceedings there is never an open grant of absolute immunity to a complainant.

Accordingly, denying an attorney who is successful in the trial of a professional disciplinary proceeding and who has charges dismissed, attorneys' fees for either representation by another or to compensate him or her for *pro se* representation or time expended, along with incidential expenses and cost and further requiring a showing of bad faith or unjustified proceeding is today, repugnant to the public interest and a violation of the constitution as discussed, *infra*.

V.

It is desirable and necessary to extend Ninth Amendment protections to attorney disciplinary proceedings and specifically to the award of attorneys' fees, expenses and costs therein, where charges are dismissed.

Appellant suggests that no intelligent approach can be made to this point without recognizing the various avenues of approach to the Ninth Amendment, as articulated in the Court's most recent case of *Griswold v. Connecticut*, 381 U.S. 479 (1965).

Mr. Justice Douglas in delivering the opinion of the Court, chose what may be referred to as the "peripheries - penumbras - emanations" approach. Mr. Justice Goldberg, concurring in the judgment, who was joined by Chief Justice Warren and Mr. Justice Brennan, chose what may be referred to as the "Ninth Amendment - basic, fundamental, essential personal rights" approach. Mr. Justice Harlan, concurring in the judgment, chose what may be referred to as the "basic values - implicit in the concept of ordered liberty" approach. Mr. Justice White, concurring in the judgment, chose what may be referred to as the "due process" approach. Mr. Justice Black and Mr. Justice Stewart, dissenting, failed to find that the Connecticut law violated any specific Constitutional provision. Both Justices felt, however, that the law was either an uncommonly silly law, an unenforceable law, or a law replete with evil qualities. Mr. Justice Black felt that it was not the function of the Court to keep the Constitution in tune with times. This function was the duty and responsibility of the people's elected representatives. Mr. Justice Stewart hinted that he may have

decided the case differently if procedural due process issues had been raised, whereby the Fourteenth Amendment could serve as a guide, but absent more, he too would submit the matter to the elected representatives of the people of Connecticut as the constitutional way to take "this law" off the books.

In dealing first with the problems raised by the dissenting Justices, it should be noted that, in Maryland, pursuant to the Maryland Constitution Article IV Section 18A, the Court of Appeals is vested with the rule making power for all State courts, subject to modification, approval by implication, or rejection by the Legislature. See appendix, pp. 36a. The rules of practice and procedure, as made by the Court of Appeals have the full force of law, until rescinded, changed or modified by said court, or otherwise by law. *Hill v. State*, 218 Md. 120, 145 A.2d 445 (1958). Further, the Maryland Rules of Procedure, within their authorized scope, are legislative in nature. *Ginnavan v. Silverstone*, 246 Md. 500, 229 A.2d 124 (1967). Under this section of the Maryland Constitution, the Legislature may rescind, change or modify a rule of the Court of Appeals. *Funger v. Mayor and Council*, 244 Md. 141, 223 A.2d 168 (1966). By implication, then, rules not rescinded, changed or modified are approved by the Legislature. The problem which readily distinguishes this situation from the situation in *Griswold*, supra, is the nature, or area of the law at issue. Most people in any state can be emotionally aroused or agitated to the point of taking an active voting stand on a law of public interest to them. It can also be argued that a legislature might occasionally be influenced to change a general court rule applicable to a majority of voters,

such as in the area of zoning. To suggest, however, that the majority of the people in any state could be actively aroused or agitated to the point of taking an active voting stand on the issues in this case, is to be politically and socially naive. Appellant further suggests, that even if the majority of the legislature consists of attorneys, that they are duty bound to represent the interest of their constituants, who might not feel that attorneys should have "special privileges" or care to understand the attendant status problem. It is apparent that the court does not encourage legislative modification of general court rules. In dealing with rules regulating "officers of the court," however, *all* courts discourage or disapprove of legislative "interference." Accordingly, there is no realistic way to expect the Legislature to rescind, change or modify Maryland Rule of Procedure BV 15(d).

The second problem raised by the dissenting Justices, specifically by Mr. Justice Stewart, is that in *Griswold*, supra, there is no claim that "the appellants" were denied any of the elements of procedural due process at their trial. Indeed, the Court was told that the Due Process Clause of the Fourteenth Amendment was not, as such, the "guide" in that case. Appellant suggests that in the instant appeal, no procedure is set forth in M.R.P. BV 15(d), or elsewhere in the BV Subtitle, applying to Discipline and Inactive Status of Attorneys, that sets forth when, where, or how to proceed under BV 15(d) or the referred to provision of M.R.P. 604(b). See Statutes and Court Rules, pp. 34a. In fact, Appellant is unable to find any reported Maryland case where attorneys' fees, expenses and costs have ever

been awarded or where the procedure to follow in attempting same is set forth. If, indeed, notice of how, when and where to proceed is one of the basic concepts of procedural due process, it is totally absent here.

Turning now to the majority and with reference to Mr. Justice Douglas' "peripheries - penumbras - emanations" approach, it has been suggested by Abraham Lincoln, and no doubt by many others, that a lawyer's time is his stock in trade. Appellant knows of no private practioners who disagree and of many who agree. The Fifth Amendment to the U.S. Constitution states, *inter alia*,:

> . . . nor shall any person . . . be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Appellant has already discussed his position as to the unique status of attorneys and how and why they are, by that status, able to be subjected to attorney disciplinary proceedings, quasi-criminal in nature. Appellant suggests that under the above approach, the failure to justly, reasonable and fairly compensate an attorney for fees and time expended in trial, expenses reasonably incidental to the litigation and for the costs thereof is a violation of the cited section of the Fifth Amendment which applies to the States thru the Fourteenth Amendment. As such it is also a violation of the Ninth Amendment. It may further be argued that the attorney's right of (or from) association, contained in the penumbra of the First Amendment is violated. As such, this too, is a violation of the Ninth Amendment.

With reference to Mr. Justice Goldberg's, Mr. Chief Justice Warren's and Mr. Justice Brennan's "Ninth Amendment - basic, fundamental, essential personal rights" approach, reference is once again made to the provisions of the Fifth Amendment, but this time also to its Self Incrimination Clause. Implicit in both the Fourth and Fifth Amendments is the right of the individual to be left alone; the right of a free person to create a zone of privacy. While this right may also be argued under the "peripheries - penumbras - emanations" approach, Appellant suggests that this right can well be a basic, fundamental, essential personal right. It is a right strongly stressed by or found within the First, Third, Fourth, Fifth and Fourteenth Amendments. It is a right that has been within the breast of every free man and woman since time immemorial. It is truly a right deeply rooted in the traditions and collective conscience of all free people in the world.

With reference to Mr. Justice Harlan's "basic values - implicit in the concept of ordered liberty" approach, it can be noted that the Circuit Court for Montgomery County, Maryland recommended dismissal in the Juvenile matter due to "patent inconsistencies" in the testimony of the juvenile and lack of corroboration of her story contrasted with the denials and explanations offered by the Appellant corroborated by disinterested witnesses. The court further notes that the reputation of the juvenile was that she was not a truthful person. In short, this case should never have come before the court, after thousands of dollars of pretrial discovery had already revealed what the court decided after weighing, qualitatively in the Juvenile matter, the

evidence presented. But it did! Mr. Justice Harlan refers to his dissenting opinion in *Poe v. Ullman*, 367 U.S. 497 (1961), for the proper constitutional inquiry in *Griswold*, supra, whereupon only the discretion of the prosecutor stood between marital privacy and criminal accountability. That there was no justiciable issue in *Poe*, does not affect the logic or principle of the relevant portions of the opinion, specifically that basic values implicit in the concept of ordered liberty preclude state regulation (by criminal law) of the intimacies of marriage. Marriage is a status. Appellant suggests that because the status of attorneys, alone, subjects them to the possibility, if not today the probability, of attorney grievance or disciplinary proceedings, that those attorneys so subjected, past the threshold point of inquiry to trial, be fully and as completely compensated for their time, property and liberty lost as is possible. This Appellant suggests, this is implicit in the concept of ordered liberty as articulated in *Griswold*, supra.

With reference to Mr. Justice White's "due process" approach, the rule in question M.R.P. BV 15(d), supra, does not pass muster, in that it cannot be shown that bad faith or unjustified proceeding are reasonably necessary for the effectuation of a legitimate and substantial state interest. Even if it can be so shown, Appellant was not permitted to show same. See, Deposition of Montgomery County Bar Association Grievance Committee - Appendix pp. 22-32a. Further, in the instant case Appellant's request for attorney's fees, expenses and costs was denied without comment by the Court of Appeals of Maryland. There can be no bona fide claim of the application of judicial discretion because there was no precedent or procedure for the

court to follow, nor was any effort made to conceive any precedent in this case. It was further Mr. Justice White's position, that where there was a significant encroachment upon personal liberty, the State may prevail only upon showing a subordinating interest which is compelling. Again, the rule in issue cannot pass muster.

Generally speaking, there would be no problem with invidious discrimination or equal protection for the Court, in extending the Ninth Amendment to Attorney Disciplinary Proceedings because there would be a rational basis for the extension. Even as this Jurisdictional Statement is being written, sex scandals are breaking out in our Nation's Capital. No doubt some will be bona fide, but no doubt some will be fabrications, the ulterior motives of which may never reach the public. Some may involve Congressmen, and others who are also attorneys. All accusations will have "the appearance of impropriety" to the public, thereby potentially subjecting innocent attorneys to attorney disciplinary proceedings under the following Disciplinary Rules:

D.R. 1-102 (A)(3)
D.R. 1-102 (A)(6)
and
E.C. 9-6.

See also:
Canons 1-9.

See Appendix pp. 35a.

Are we to have the time of our country's Congress, bars, grievance committees, judges and courts consumed in these matters, thru the forum of attorney disciplinary proceedings merely because of the fact that attorneys possess a unique status? Are all unpopular congressmen who are also attorneys, businessmen who are also

attorneys, and other members of their staff going to be subjected to this problem. The answer is no, if and only if those who are so subjected to the point of standing trial, are fully compensated therefore, when they successfully defeat the charges and the questionable, wrongfully and possibly malicious use of such a forum.

VI.

Did the court impermissibly circumvent both *Spevack v. Klein*, 385 U.S. 511 (1967), and *Chambers v. Mississippi*, 410 U.S. 284 (1973), in violation of the 14th Amendment, when it, by mechanical operation of an evidentiary rule, and without also weighing the "quality" of the evidence in the Clem matter, presented against Appellant in this attorney disciplinary proceeding, sanctioned the Appellant for not testifying or for not contradicting the testimony offered by Appellee?

The Recommendations of the Circuit Court for Montgomery County, Maryland which were adopted in full, excepting the disposition, are set out, in appropriate part on pp. 8 of the Statement of the Case, and in full in the Appendix at pp. 1-6a. It is obvious from reading them, that the court did not give regard to the *Chambers*, supra, case wherein this Court held at pp. 302:

> Few rights are more fundamental than that of an accused to present witnesses in his own defense. . . . In the exercise of this right, the accused, as is required of the State, must comply with established rules of procedure and evidence designed to assure both fairness and reliability in

> the ascertainment of guilt and innocense. . . . . In these circumstances, where constitutional rights directly affecting the ascertainment of guilt are implicated, the hearsay rule may not be applied mechanistically to defeat the ends of justice.

Appellant suggests that while the explicit facts of *Chambers*, supra, deal with the hearsay rule, that the principle enunciated, not being a new principle of constitutional law, applies to other evidentiary rules as well. It should further be noted that the rules of evidence applied to attorney disciplinary proceedings in Maryland are articulated in M.R.P. BV 10(d), supra, and are those that apply to civil proceedings in equity. Accordingly, the evidentary rules should be even more liberal than those required by constitutional standards in criminal proceedings.

There is also another fundamental right herein involved and that is the right to remain silent or not to testify in both criminal and quasi-criminal proceedings. Included in this right is the right to be judged based on the testimony of others. Accordingly, before any respondent need give personal testimony in an attorney disciplinary proceeding, he or she has the right to be judged on what has already been put in evidence. This Court was even more explicit in *Spevack*, supra, where it held:

> . . . We said in Malloy v. Hogan [378 U.S. 1 (1964)]:
> "The Fourteenth Amendment secures against State invasion the same privilege that the Fifth Amendment guarantees against federal infringement - the right of a person to remain silent unless he chooses to speak in the unfettered exercise of his own will, and to suffer no penalty. . . for such silence."
> 378 U.S. at 8, 84 S. Ct. at 1493.

> In this context "penalty" is not restricted to fine or imprisonment. It means as we said in *Griffin v. California*, 380 U.S. 609, 85 S. Ct. 1229, 14 L.Ed.2d 106, the imposition of any sanction which makes the assertion of the . . . privilege "costly." Id at 614. . .
>
> The threat of disbarment and loss of personal reputation, and of livelihood are powerful forms of compulsion. . .

Since *Ruffalo*, supra, was decided after *Spevack*, supra, there is no question that this proceeding is quasi-criminal in nature.

Appellant did not testify after hearing the testimony of the complainant, Mr. Clem and of his corroborating witness, a Mr. Weekley. The reason being that their testimony was diametrically opposed on one very important point which should have drastically affected the credibility of both Mr. Clem and Mr. Weekley, after which the Appellee chose to read a statement, made at an earlier time by the Appellant, into the record as a judicial admission. That admission states that Mr. Clem first assaulted the Appellant while on private property which was not Mr. Clem's with his automobile and that the Appellant kicked at the automobile to avoid being hit. This is found at (TR-C-215,216,217). In addition to this admission, there is the testimony of Officer Burdette, with the Montgomery County Police Department, that Appellant had advised him at Clem's parents home, in the presence of Mr. Clem, that Mr. Clem had almost run over the Appellant with his automobile and this was not denied by Mr. Clem. (TR-C-203). Accordingly, a rather clear case of self-defense has been made out by the Appellee for the Appellant, even

though Clem denied attempting to hit the Appellant with his automobile on the stand.

The testimony of Mr. Clem and Mr. Weekley that is in direct conflict deals with what occurred at the intersection of Georgia Avenue and Randolph Road where there is a fire station. There is also a light at the intersection and it is the only light between where the assault on Appellant occurred and that intersection. Mr. Weekley claims that he followed the high speed chase of Mr. Clem and Appellant up Georgia Avenue to that intersection where Mr. Clem (and Appellant) hadn't stopped at the light but had gone thru the intersection on a green light [on a light that wasn't red] and turned, whereupon Mr. Weekley lost Appellant and Mr. Clem. (TR-C-198,199).

Mr. Clem's testimony not only was that he and Appellant stopped at the light on Georgia Avenue and Randolph Road but that Appellant then said to him "lets go to the police station," which was only one block away on Randolph Road, and that he was afraid of Appellant at that time. (TR-C-153). Yet on the next page of the record he testified that he expected the Appellant to go get the police and "bring them to him" while he was sitting at the light. (TR-C-154).

Mr. Justice Frankfurter in *Watts v. Indiana*, 338 U.S. 49, 52 (1949) commented:

> There is torture of mind as well as body; the will is as much affected by fear as by force. And there comes a point where this Court should not be ignorant as judges of what we know as men.

Appellant suggests now, as below on pp. 12, 13 of Respondent's Exceptions to Findings of Fact and Recommendation of the Circuit Court for Montgomery

County, Maryland, see Appendix, pp. 17-20a, that Mr. Clem's fear of going for help to the police only a block away is explained by the judicial admission made by the Appellee. Appellant further suggests, as below on pp. 13, 14 of the same Exceptions that both Mr. Clem's and Mr. Weekley's credibility is totally destroyed, since Mr. Weekley had to be fabricating his testimony and at someone else's suggestion. McCormick, in section 47 of McCormick on Evidence, 2d (1972) deals with this situation under "Impeachment by Contradiction.":

> .... Finally, a third kind of fact must be considered. Suppose a witness has told a story of a transaction crucial to the controversy. To prove him wrong in some trivial detail of time, place or circumstance is "collateral." But to prove untrue some fact recited by the witness that if he were really there and saw what he claims to have seen, he could not have been mistaken about, is a convincing kind of impeachment that the courts must make place for, although the contradiction evidence is otherwise inadmissible because it is collateral. . .

Additionally, when questioned, Officer Burdette in recounting the events of the evening in issue failed to mention any witness involved. (TR-C-202,203), and when asked directly if Mr. Clem ever mentioned a witness his answer was, "no sir." (TR-C-208). It would further appear to Appellant that this evidentiary situation is in principle, once again, a *Chambers*, supra, type of situation.

Clearly, there is no testimony of significance left for the Appellant to rebut, since the alleged statement involving the controversy of "If you want to get your wife back, why don't you try returning her car" was

not made in the presence of anyone other than Mr. Clem, who testified, and Appellant was therefore sanctioned for not testifying, there being no credible testimony on communication with the client of another. Even if this statement is given some credibility it was expressly discounted in oral argument by Judge John Eldridge, Maryland Court of Appeals, as falling within the Canon prohibiting communications with the client of another on subject matters of the controversy. Appellant further suggests that if he was sanctioned for "the appearance of impropriety" or for "conduct that adversely reflects on his fitness to practice law" that there is no credible testimony remaining upon which same can be based, which will be discussed in the next point.

VII.

Did the count, by failing to articulate the specific acts which formed the basis of Appellant's improper or unethical conduct in the Clem matter, appear to arbitrarily and capriciously sanction the Appellant in violation of due process.

The principles behind due process are notice, opportunity to be heard and fundamental fairness.

Appellant suggests that when the Circuit Court for Montgomery County, Maryland submitted its opinion and recommendation to the Court of Appeals that it failed to specifically articulate for what conduct it was recommending Appellant be sanctioned. This presented Appellant with having to argue all possible violations in his Exceptions, supra, in oral argument to the Court of Appeals. Upon receipt of the opinion and order of the court, Appellant petitioned the court to clarify, *inter*

alia, the Clem matter in paragraph 2 and 3 of the petition, which was denied without further comment by the court. See Appendix, pp. 14a. Inasmuch as Appellant timely raised the federal issues discussed, supra, in Clem, it is suggested that the court, by failing to articulate in its conclusions what specific acts resulted in the violations of the Code of Professional Responsibility for which Appellant was sanctioned, that he was arbitrarily and capriously sanctioned.

CONCLUSION

The issues raised herein are of great importance to the Appellant and of far-reaching importance to the legal profession. It is submitted that the First, Fifth, Ninth and Fourteenth Amendments to the Constitution forbid the State of Maryland from enacting laws or court rules which fly in the face of both common sense and reality and which unreasonably and arbitrarily restrict attorneys, because of their unique status, from their property rights and rights to a fair trial in disciplinary proceedings.

For the reasons set forth above, jurisdiction should be noted.

Respectfully submitted,

BRUCE W. HAUPT
Suite 505, Washington Building
1435 G Street, N.W.
Washington, D.C. 20005
(202) 783-7232

Pro Se

APPENDIX A

MONTGOMERY COUNTY BAR ASSOCIATION, INC.

v.

Bruce Widenor HAUPT.

Misc. (Subtitle BV) No. 13.

Court of Appeals of Maryland.

March 15, 1976.

Disciplinary proceedings were instituted by Montgomery County Bar Association. The Court of Appeals held that an attorney's direct confrontation with adversary known to be represented by attorney, coupled with overzealous representation of client, warrants 30-day suspension.

Order accordingly.

1. Attorney and Client ⇐53(2)

Evidence did not show that attorney had failed in his duty as member of legal profession to maintain integrity. Code of Professional Responsibility, Canon 1 (DR 1-102(A)).

2. Attorney and Client ⇐38, 58

Overzealous representation of client and direct confrontation with adversary at time adversary is known to be represented by attorney is unprofessional conduct and warrants 30-day suspension. Code of Professional Responsibility, Canon 7 (DR 7-104(A)(1)).

Bruce W. Haupt, Silver Spring, pro se.

Thomas L. Craven and Reginald W. Bours, III, Rockville, for petitioner.

Argued before MURPHY, C. J., and SINGLEY, SMITH, DIGGES, LEVINE, ELDRIDGE and O'DONNELL, JJ.

ORDER

The Court having considered the Findings and Recommendation of the majority

and dissenting members of the panel of judges, the exceptions thereto filed by the Respondent and by the Montgomery County Bar Association, the answers thereto filed by the respective parties, and arguments of counsel, and the Court having further considered the Motion to Tax Costs filed by the Montgomery County Bar Association and the Motion to Tax Costs and For Attorneys Fees filed by the Respondent, it is this 15th day of March, 1976

ORDERED, by the Court of Appeals of Maryland, that the findings and the recommendation of the majority of the panel of judges as to the Juvenile matter be, and they are hereby, adopted; and it is further

ORDERED that the findings of fact of the panel of judges with respect to the Clem matter be, and they are hereby, adopted, and that the recommendation of the panel that Respondent be suspended from the practice of law for one year is not adopted; and it is further

[1] ORDERED that, accepting the findings of fact of the panel of judges with respect to the Clem matter, the Respondent, Bruce Widenor Haupt, be and he is hereby, suspended from the practice of law in the State of Maryland for a period of thirty days to begin April 14, 1976; and it is further

ORDERED, pursuant to the provisions of Rule BV15 a, that the Attorney Grievance Commission pay the sum of two thousand three hundred seventy-two dollars and fifty cents, ($2,372.50) to John W. Whitman, Court Reporter, and that the Respondent and Montgomery County Bar Association pay the costs and expenses respectively incurred by each in these proceedings; and it is further

ORDERED that Respondent's motion for payment of Attorneys' Fees is denied.

FINDINGS AND RECOMMENDATION

This matter is before the Court, sitting as a three Judge panel by designation of

the Chief Judge of the Court of Appeals, to hear and make recommendations with respect to certain charges brought by the petitioner against the respondent as a member of the Maryland Bar and a practicing attorney within the State. Disciplinary sanctions are sought in accordance with the provisions of the BV Rules.

The respondent is charged in two separate instances involving two separate complainants. The first will be referred to as the Juvenile * matter and the second as the Clem matter.

With respect to the Juvenile matter, the respondent is charged with acts constituting

a. Conduct involving dishonesty, fraud, deceit and misrepresentation;

b. Conduct prejudicial to the administration of justice;

c. Conduct that adversely reflects on his fitness to practice law.

All of the alleged conduct is claimed to be in violation of Canon 1 of the Code of Professional Responsibility and Disciplinary Rule 1-102(A). The misconduct alleged is set forth in the petition as consisting of the following specific activities:

1. The respondent is charged "in approximately between June and October 1973" with picking up the Juvenile, a girl 16 years of age, who was hitchhiking in Montgomery County, Maryland, and that while in respondent's automobile, the Juvenile and the respondent, at the suggestion of the respondent, smoked marijuana cigarettes furnished by the respondent, and that the respondent then took the Juvenile to an apartment in Silver Spring, Maryland, where he attempted to take sexual liberties with her, and that on several occasions during the following year, respondent telephoned the Juvenile and was informed by her of her desire to be emancipated and removed from the jurisdiction of the Juvenile Court for Montgomery County, Maryland.

2. That on or about July 3, 1974 the respondent procured his appointment by the District Court of Maryland, sitting as a Juvenile Court, as guardian ad litem of the Juvenile.

3. That on or about July 4, 1974 the respondent visited the Juvenile in Prince George's County Hospital where she was recuperating from an appendix operation and there attempted to take sexual liberties with her.

4. That on or about August 6, 1974 the respondent went to the apartment occupied by the Juvenile and produced a substance which he identified as hashish which, at his urging, was smoked by the Juvenile and the respondent and that thereafter, on the same date, respondent assaulted the Juvenile and attempted to have sexual relations with her against her will and that when she resisted the respondent threatened to have her re-committed by the Juvenile Court unless she cooperated.

With respect to the Clem matter, the respondent is charged with conduct constituting

a. Knowing engagement in illegal conduct and conduct contrary to Canon 7 of the Code of Professional Responsibility and Disciplinary Rule 7-102(A)(8).

b. Communication with a party he knew to be represented by a lawyer on the subject covered by that representation without the prior consent of that lawyer in violation of Canon 7 of the Code of Professional Responsibility and Disciplinary Rule 7-104(A)(1).

c. Conduct adversely reflecting on respondent's fitness to practice law and prejudicial to the administration of justice in violation of Canon 1 of the Code of Professional Responsibility and Disciplinary Rule 1-102(A).

* The name of the juvenile will not be stated but will be referred to as the Juvenile.

The allegations with respect to these charges assert that on or about February 20, 1975 the respondent, while representing Patricia M. Clem, in a domestic relations matter, committed an assault upon Charles E. Clem, Patricia's estranged husband, damaged his automobile, chased him at high and dangerous speeds over the public roads of Montgomery County and engaged in communications with the said Charles E. Clem regarding the litigation between Mr. Clem and his wife, Patricia, with full knowledge that the said Charles E. Clem was represented by an attorney in that litigation.

Testimony was offered and evidence presented by the petitioner in respect to both the foregoing episodes. The respondent presented evidence only in the Juvenile matter. The panel will discuss each of these two matters separately.

THE JUVENILE MATTER

Petitioner's evidence consisted of the testimony of the Juvenile, Judge Leonard Rubin of the Montgomery County Juvenile Court, the Juvenile's father, . . ., and several other witnesses. From this testimony it is apparent to a majority of this panel that the validity of the petitioner's charges with respect to the specifically alleged episodes involving the Juvenile, depends almost entirely upon the unsupported testimony of the Juvenile herself. The witnesses produced by the petitioner to corroborate the Juvenile's evidence either did not, in fact, provide that corroboration or testified in contradiction to some of her assertions and, in fact, in at least two instances tended to corroborate the respondent's version of what occurred.

Against this testimony, the respondent produced disinterested witnesses who testified as to the respondent's activities on the day of the hitchhiking episode which made it impossible for the respondent to have been where the petitioner charges him with having been on that day. In addition, the respondent produced the hospital roommate of the Juvenile, again a disinterested witness, whose testimony accounted for nearly all of the time the Juvenile was in her hospital room and who was there when the respondent visited the Juvenile at the times the petitioner charges improper conduct. This witness neither saw nor heard any improper conduct by the respondent. With respect to the episodes occurring at the Juvenile's apartment in August of 1974, the respondent produced a corroborating witness whose testimony supported the respondent's version of the events of that day. Finally, respondent produced witnesses who were acquainted with the Juvenile through the Juvenile Court, and who had dealt with her personally either as social workers or supervisors of a facility at which the Juvenile had stayed. These witnesses testified that the Juvenile was not a truthful person.

Without going into particular detail on each and every one of the episodes related and each and every portion of the testimony adduced, suffice it to say that, taking into consideration the patent inconsistencies and discrepancies in the Juvenile's testimony and the lack of corroboration as to many of the material elements of her story, together with the denials and explanations of the respondent corroborated by independent, disinterested witnesses in many particulars, the majoirty of the panel is not persuaded that the petitioner has proven the specifications charged by the clear and convincing evidence required by the law applicable to disciplinary proceedings. Accordingly, the panel recommends that the charges arising out of the Juvenile's episodes be dismissed.

However, notwithstanding this recommendation, the panel cannot leave this matter without commenting on the general impression left by the respondent with regard to the Juvenile's stewardship. Respondent is a young attorney and the complainant was an attractive young girl, mature far beyond her years, who had a history of juvenile difficulties with her family and with the juvenile authorities and whose

reputation among those who dealt with her and knew her was one of untruthfulness and unreliability. Against this background, it would appear that the respondent showed an inordinate interest in the Juvenile's personal life and conducted himself in his dealings with her in a grossly offensive manner. His lack of candor when interrogated by the petitioner's grievance committee, his gross and vulgar references and insinuations in the presence of the Juvenile and her friends and even her father, all are indicative of an attitude which hardly bespeaks the standards expected of a member of the bar in dealing with his client or ward. Nevertheless, the petitioner has chosen to limit its charges to the detailed and specific episodes set forth in the petition. No amendments have ben proffered either to add further acts or to broaden the allegations to include, more generally, respondent's conduct with the Juvenile. The majority of the panel believes it must make its determination on the basis of the allegations which the respondent has been compelled to answer for and defend against. See *Bar Ass'n v. Cockrell*, 270 Md. 686, 313 A.2d 816 (1974).

THE CLEM MATTER

Turning now to the Clem matter, the situation is entirely different. In this matter the evidence presented by the petitioner as regards the happening of the episode and the part played by the Clems and the respondent was undisputed by the respondent. He presented no testimony in opposition to the petitioner's evidence which was offered through Mr. and Mrs. Clem, a police officer and a corroborating witness named Weakley. This testimony disclosed that at the time of the episodes in question the complainant, Charles E. Clem, and his wife, Patricia M. Clem, had been separated for a period of several weeks. Mrs. Clem was represented by the respondent and Mr. Clem was represented by John S. McInerney, Esq., a member of the bar practicing in Montgomery County. On the evening of February 20, 1975, Mr. Clem decided he would like to persuade his wife to switch cars. When they had separated she had taken a 1973 Mercury Capri and left him with a 1967 Chevrolet stationwagon. He called his wife to arrange this switch but she refused. Both cars were owned jointly by the parties. Clem, accompanied by Weakley, then went to his wife's house and attempted to leave the stationwagon and take the Capri. He found the Capri, got into it, started it up and was leaving when a man came running out of the house, subsequently identified as the respondent. The testimony was that the respondent then kicked the driver's side door of the Capri and when the car did not stop, the respondent got in his own car, a Datsun, and followed. A high speed chase then ensued out Georgia Avenue, across Randolph Road, Layhill Road, Bel Pre Road, and along several more Montgomery County streets and roads, finally ending at the home of Clem's parents on Crawford Drive in Rockville, Maryland, after a chase of a good many miles. Speeds reached 60 to 65 miles per hour and the respondent made use of a powerful spotlight, flashing it in the rear view mirror of the Capri. All of this chase took place in the late evening hours of February 20 and according to Clem, at a time when there was appreciable traffic on the streets traversed.

On arriving at Clem's parents home, the respondent followed Clem, uninvited, into the house and threatened Clem with a criminal warrant if he did not return the Capri to his wife. The respondent called the police and an officer came to the house. A discussion then ensued in the living room of Clem's parents home between the respondent, Clem and the police officer, Corporal Burdette. During this discussion, respondent directly confronted Clem, even though the respondent knew that Clem was represented by Mr. McInerney. Ultimately the matter was resolved by Clem returning the Capri and at the time of the hearing, Clem and his wife were reconciled and living together. Corporal Burdette testified to the events that occurred in the living room of Clem's parents home and Roger Lee Weakley

corroborated Clem's story with respect to Clem's attempt to secure possession of the Capri. Weakley testified further that he attempted to follow the Capri and the Datsun but lost them at Randolph Road after running at high speeds up Georgia Avenue.

[2] None of these facts were disputed by the respondent and the panel concludes that the respondent's conduct throughout this episode was highly improper and specifically in violation of Canons 1 and 7 of the Code of Professional Responsibility and Disciplinary Rules 1-102(A), 7-102(A)(8) and 7-104(A)(1). The high speed chase through heavily traveled thoroughfares and residential streets constituted illegal conduct on the part of the respondent not justified by the circumstances. His arrogant intrusion, uninvited, into the home of Mr. Clem's parents, followed by threats of criminal action against Mr. Clem, fully support the specifications of the petitioner's charges. In addition, respondent's direct confrontation and discussion with Clem at a time when respondent knew Clem to be represented by a lawyer in the domestic relations matter, was also unprofessional conduct and a violation of the Code and Disciplinary Rules.

Based on the foregoing, the panel finds that the petitioner's allegations with respect to the Clem episode have been proven by clear and convincing evidence. The panel recommends that disciplinary action be taken against the respondent, specifically suspension from the practice of law for one year commencing on the date of the approval of this recommendation by the Court of Appeals.

/s/ David L. Cahoon

David L. Cahoon, Judge of the Circuit Court for Montgomery County, Maryland

/s/ Philip M. Fairbanks

Philip M. Fairbanks, Judge of the Circuit Court for Montgomery County, Maryland

MEMORANDUM OF DISSENT

I concur in the findings and recommendations in the *Clem* matter. However, I strongly dissent in the conclusions of my fellow judges concerning the *Juvenile* matter.

While the majority of the Panel feels that there is not sufficient clear and convincing evidence to sustain the charges on the specific dates mentioned, I am convinced that there is overwhelming evidence to indicate that the respondent's conduct adversely reflects on his fitness to practice law, both by his involvement in marijuana and his conduct during the time a delinquent child of 16 years of age was under his supervision and control. Although there is some conflict as to specific dates, she (now nineteen years of age) is completely believable to me, and the respondent's attitude to this disciplinary proceeding and his statements during the trial bring me to the conclusion that the Bar Association charges have been sustained.

Mr. Haupt destroyed all his records concerning his ward and client, the Juvenile. Her detailed and explicit recount of the events involving his conduct are such as to belie any perjury by her. Her testimony had not varied from the time of the first complaint and hearing by the Bar Association Grievance Committee. She has now been emancipated and is living in Florida and has no motive to continue any untruthful account of affairs and her testimony was corroborated, in part, by her father . . . and other witnesses, and the respondent's witness, ...

As recently reemphasized in *Bar Association of Baltimore City v. Siegel*, Md. App., 340 A.2d 710 (filed July 14, 1975), this "Court has the duty, since attorneys are its officers, to insist upon the maintenance of the integrity of the bar and to prevent the transgressions of an individual lawyer from bringing its image into disrepute. Disciplinary proceedings have been

established for this purpose, not for punishment, but rather as a catharsis for the profession and a prophylactic for the public."

/s/ Ralph G. Shure
Ralph G. Shure, Judge of the Circuit Court for Montgomery County, Maryland

ORDERED, this 24th day of November, 1975, that a copy of these opinions and recommendation be mailed by the Clerk of this Court to the Maryland Court of Appeals with copies to petitioner and the respondent, in compliance with Rule BV11 of the Maryland Rules of Procedure.

/s/ Ralph G. Shure
Ralph G. Shure, Judge

/s/ David L. Cahoon
David L. Cahoon, Judge

/s/ Philip M. Fairbanks
Philip M. Fairbanks, Judge

WEST KEY NUMBER SYSTEM

IN THE COURT OF APPEALS OF MARYLAND

BAR ASSOCIATION OF MONTGOMERY COUNTY, MARYLAND	*	
Petitioner	*	Misc. Docket #13 (Subtitle BV) September Term, 1975
v.	*	
BRUCE WIDENOR HAPT	*	
Respondent	*	

MOTION TO TAX COSTS AND FOR ATTORNEYS FEES

Now comes Respondent, Bruce W. Haupt, and moves this Honorable Court pursuant to MRP BV 15 to tax the costs of the captioned proceedings against either the Montgomery County Bar Association or the State of Maryland and as reasons therefore states:

* * * *

3. Respondent in the defense of his case was required to expend substantial funds in the form of investigative services. Said expenditures were necessary to show the lack of trustworthiness or the out right perjury on the part of a substantial number of witnesses produced by and on behalf of the Montgomery County Bar Association and/or Grievance Committee.

4. That the Montgomery County Bar Association Grievance Committee in terms that were "plausibly

deniable" prior to the certification of the Hopkins and Clem cases to this Honorable Court for desposition noted that same could be informally disposed of by Respondent's surrendering his handgun permit and his handguns and by seeing a psychiatrist of their choice to rule on his sanity and fitness to practice law. That Respondent is unable to find anywhere in the Canons of Professional Responsibility the authority for a Grievance Committee to take such action where they believe a violation of the Canons have actually taken place.

5. That Respondent refused to go along with the program outlined by the Montgomery County Bar Association Grievance Committee and was outraged by the same and did not hesitate to express such outrage at such improper and unprofessional conduct to the Grievance Committee.

6. That accordingly, said matters were certified to this Honorable Court, and same were transmitted to the Circuit Court for Montgomery County for disposition. That in the course of disposition approximately five days of time were consumed by three Circuit Court Judges to hear said matters not to mention the substantial amount of time and effort required on the part of Respondent to properly investigate and defend said actions. Further, the emotional distress caused directly by the reckless conduct of the Bar Association Grievance Committee in the handling of this matter grossly interferred with Respondents practice of law and with Respondents family life.

* * * *

11. It is readily apparent to this attorney that if other attorneys in this jurisdiction are to avoid the harassment and inconvenience in the name of public necessity that this attorney was subjected to in the instant proceedings, that the only way this can be done is by the award of both cost and attorneys fees against the organizations responsible for the perpetuation of the proceeding.

12. That as to the Hopkins matter, the only substantially new testimony that was admissible in the proceeding and that was adduced by the substantial pre-trial discovery and investigative efforts was the location and name of Karen Hopkins hospital roommate who was able to completely impeach Karen Hopkins testimony as to what allegedly occurred in the hospital. The testimony of Letitia Cruz was available to the Grievance Committee prior to the certification to this Honorable Court for action. The testimony of most of the Petitioner's witnesses while not available prior to the certification to this Honorable Court either supported the Respondent's version of the facts or failed to corroborate the Petitioner's. As to the Clem matter, it was the position of the Respondent from the beginning that none of the conduct that took place on the date of the occurrence constituted a cause of action in a Attorney Grievance proceeding.

13. That upon transmission to the Court of Appeals from the Circuit Court for Montgomery County the record consisted of nine volumes. Respondent is further not aware of any other case since the handling of attorney grievances by this Honorable Court where such a substantial effort was made by a Bar Association to discipline such an insignificant matter. While the

Hopkins matter is not insignificant, the evidence available to the Petitioner prior to the trial of the case should clearly have indicated that the Petitioner would not only not be able to make out its case at trial by the *civil* burden required, however, that there was substantial possibility of perjury on the part of the Petitioner's complaining witness as evidenced by the testimony of the other witnesses.

* * * *

15. Lastly, the manner in which the Bar Association handled the instant matter in trial is perhaps best characterized by what happened one morning upon Respondent's arrival in the courtroom. He was approached and searched for weapons. It appeared that prior to his arrival, Mr. Bours, one of the attorneys for the Petitioner, had approached Chief Judge Shure and in an *ex parte* communication advised Judge Shure that Respondent was armed and had a handgun in his boot. Alas, the search revealed only one sock and one foot in each boot and no handgun. Communication of this nature did little to foster the neutral attitude on the part of the bench that can be expected in an attorney grievance proceeding and did extremely little with regards to improving Respondent's attitude toward the proceeding.

WHEREFORE, your Respondent prays that all costs incident to the captioned matter be paid by the Montgomery County Bar Association or in the alternative the State of Maryland. Respondent also prays the award of $15,000.00 attorneys fees same to

be assessed against the Montgomery County Bar Association or in the alternative, the State of Maryland.

Respectfully submitted,

Bruce W. Haupt
Respondent
8720 Georgia Avenue
Silver Spring, Maryland 20910
565-0808

IN THE COURT OF APPEALS OF MARYLAND

MONTGOMERY COUNTY BAR Association, Inc. *

v. * Misc. Docket (Subtitle BV)

Bruce Widenor Haupt * No. 13, September Term, 1975

*

PETITION TO CLARIFY ORDER FILED 15 MARCH, 1976

To the Honorable Judges of the Court of Appeals of Maryland:

Now comes Bruce W. Haupt, Respondent, and moves this Honorable Court for a clarification as to the provision of the Order dated 15 March, 1976:

1. Considering the holding of the Court, Respondent has no objections to paying the costs incurred by him in the Clem proceeding, however, it is Respondent's understanding that a finding of not quilty, or a recommendation that charges be dismissed in an Attorney Grievance proceeding must be accompanied by an award of costs in favor of the respondent for that portion of the proceeding. It is Respondent's understanding that any order to the contrary is a depravation of Respondent's property rights in violation of the U.S. Constitution.[1]

2. Respondent was suspended from the practice of law in the State of Maryland for thirty days effective 14 April, 1976. If charges are to be dismissed as to the Hopkins matter, or the Juvenile matter, Respondent feels that the Bar would benefit by knowning specifically for what conduct he is being sanctioned.

3. If three times zero is zero and if the Petitioner did not contest the allegation of Respondent that the lower court's holding was incorrect in the Clem matter as to the fact that Respondent did present testimony in opposition to the Petitioner's evidence, why did this Honorable Court adopt in toto the lower court's opinion in the Clem matter?

4. Respondent requests and suggests that it would be to the benefit of the Bar for this Honorable Court to articulate its reasons for denying Respondent's motion for payment of Attorneys' Fees as to the Hopkins or the Juvenile matter.

WHEREFORE, Respondent requests this Honorable Court issue a supplemental order addressing and clarifying the above points.

Respectfully submitted,

Bruce W. Haupt
Respondent
8720 Georgia Avenue
Silver Spring, Maryland 20910
565-0808

* * * * *

1. Respondent suggests that if an attorney in an attorney disciplinary proceeding is disciplined in the interest of the public and not to punish said attorney, then it is an accurate corollary that an attorney defends himself or herself in such a proceeding in *the public interest* and, accordingly all costs and fees, including attorney's fees should be awarded where a petition is dismissed.

Court of Appeals
of Maryland
Courts of Appeal Building
Annapolis, Md. 21401

JAMES H. NORRIS JR.
CLERK

JOSEPH L. DIGAIA
CHIEF DEPUTY

ROBERT WAYNE RICHARDS
VIRGINIA LEE HILL
ASSISTANT CLERKS

MARY C. MOLLOY
ASSISTANT CLERK

301 267-5341

March 19, 1976

Bruce Widenor Haupt, Esq.
3805 Metropolitan Building
8720 Georgia Avenue
Silver Spring, Maryland 20910

Re: Montgomery County Bar Association, Inc. v. Bruce Widenor Haupt
Misc. Docket (Subtitle BV)
No. 13, September Term, 1975

Dear Mr. Haupt:

The Court has considered your petition to clarify order filed 15 March, 1976 and, for your information said petition was denied by Chief Judge Murphy on March 19, 1976.

Very truly yours,

Clerk

JHNjr/jr
cc: Thomas L. Craven, Esq.
Reginald W. Bours, III, Esq.
L. Hollingsworth Pittman, Esq.,
Bar Counsel

IN THE COURT OF APPEALS OF MARYLAND

Montgomery County Bar Association, Inc.	*	
Petitioner	*	
vs.	*	Miscellaneous Docket Subtitle BV No. 13 September Term, 1975
Bruce Widenor Haupt,	*	
Respondent	*	

RESPONDENT'S EXCEPTIONS TO FINDINGS OF FACT AND RECOMMENDATION OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

Now comes the Respondent and notes the following exceptions to the findings and recommendation of the court:

* * * * *

II. As to the Clem matter,

* * * * *

Further, it is blatently apparent that the Petitioner urged the court to sanction the Respondent for not permitting Mr. Bours, one of the Attorneys for the Petitioner, to aggravate and agitate the Respondent a second time on the stand as had occurred during the Hopkins case, by noting that in an attorney disciplinary proceeding an attorney has no right to refuse to testify. This is not true. Respondent suggest that while it is the

teaching of *Spevack v. Klein,* 385 U.S. 511(1967), that an attorney can evoke the 5th Amendment in a disciplinary proceeding and remain silent without suffering *any* penalty for such silence, such as the threat of disbarment, or the imposition of any sanction which makes the assertion of the privilege costly, this Honorable Court need never reach this issue because of Maryland's Statutory Adverse Witness Rule, until the Bar Association, or henceforth, the Attorney Grievance Commission calls the Respondent and he or she refuses to testify. The Petitioner never called the Respondent in the Clem case, not even after the invitation to do so was extended (TR-D-63,64). Yet the Petitioner berated the Respondent for not testifying and implied that the Respondent had something to hide by not testifying (TR-D-2, *et seq*). A respondent in an attorney grievance proceeding is never under an obligation to satisfy the idle curiousity of the petitioner, nor is a respondent under any obligation to voluntarily subject oneself to the abuses of the petitioner's trial tactics, such as choice of prosecutors, etc. (TR-C-76,81,82) The court, apparently, rather than choosing to sanction the Respondent for "failing to testify" made the mistake of accepting all other testimony that the Respondent might have been expected to contradict as gospel, without making any effort to go beneath the surface, thus giving the same effect to Petitioner's arguments.

Accordingly, considering the Respondent's testimony of self-defense offered in the form of a judicial admission by the Petitioner, the demurrable nature of the charges, Officer Burdette's testimony and Mr. Clem's failure to deny (Mr. Clem being a lay witness as opposed to an attorney) the allegations that he had

almost hit Respondent, and the fact that the Respondent is presumed innocent and an individual of moral fitness has no obligation to testify for whatever reason, there is squarely presented for the trier of the fact a conflict in the testimony as to the alleged assault on Mr. Clem by Respondent.

To resolve this conflict, it is necessary to examine the testimony of Mr. Clem, along with any motive he may have had for bringing the charge or distorting or falsifying it, along with the testimony of other witnesses presented by the petitioner.

In examining Mr. Clem's testimony, firstly let us ask whethere there is any one point in his testimony where his credibility is virtually destroyed and the answer is yes (TR-C-153,154,155). On these pages of the transcript, Mr. Clem has testified to the fact that during the chase he was afraid of me. That he stopped for a red light (see also TR-C-132); (C.F. Mr. Weakley's testimony, TR-C-198,199) at Randolph Road and Georgia Avenue where there is a fire station. Mr. Clem readily admits that Respondent said "Lets go to the police station" (TR-C-153) and that he was also afraid at that time of Respondent. The police station was less than 1 block away on Randolph Road, yet with all his fear of Respondent on the next page of the transcript he testified that he expected Respondent to go get the police and "bring them to him" while he was sitting at tne red light. Is this the way a man who is afraid acts? Justice Felix Frankfurther in *Watts v. Indiana,* 338U.S. 49,52 (1949) said about a similar credibility stressing situation "There is torture of mine as well as body; the will is as much affected by fear as by force. And there comes a point where this Court should not be ignorant

as judges of what we know as men." Mr. Clem was afraid alright, as his testimony is in no way contradicted on this point. But what fear would keep him from going to the police station one block away for help? The answer is found in Petitioner's aforementioned judicial admission: The fear of being arrested and charged with assault with a motor vehicle. Something Mr. Clem catagorically denied (TR-C-153). Something doesn't add up and that something is Mr. Clem's testimony. See also (TR-C-142):

* * * * *

Mr. Weakley's testimony is also helpful in this regard. Mr. Weakley testified that Mr. Clem hadn't stopped at a red light but had gone thru the "intersection" (a diagonal cut-thru for fire department use which cuts off about 5 feet of corner at the intersection); that the light was green for him and that he was sure the light wasn't red and that after we both made the turn he lost us (TR-C-198,199).

Respondent directs this Honorable Court's attention to § 47 of McCormick on Evidence 2d, Impeachment by "Contradiction": Disproving the facts testified to by the first witness and specifically to page 99, right hand column, second paragraph:

> Finally, a third kind of fact must be considered. Suppose a witness has told a story of a transaction crucial to the controversy. To prove him wrong in some trivial detail of time, place or circumstance is "collateral." But to prove untrue some fact recited by the witness that if he were really there and saw what he claims to have seen, he could not have been mistaken about, is a convincing kind of

> impeachment that the courts must make place for, although the contradiction evidence is otherwise inadmissible because it is collateral under the test mentioned above.

There is no problem with admissibility, since the evidence is there already. The point is someone, Mr. Clem or Mr. Weakley is lying. Mr. Clem is not lying because his fear kept him at the red light for sometime, expecting Respondent to bring the police to him (c.f. TR-C-134 Where Mr. Clem claimed he was willing to actually go to the police station with the Respondent) so that means that Mr. Weakley is lying. Not only is he lying but his testimony indicates he was never there, except at someone else's suggestion. By process of elimination, Respondent suggests that this means any such suggestion would have had to come from Mr. Clem to bolster his version of the assault and the chase and, more importantly, to protect Mr. Clem from any future charges of assault with a motor vehicle that might be made by Respondent.

This conclusion is supported by Mrs. Clem. She conveniently had some trees get in her way so her vision was blocked in her husband's assault on Respondent, which was not unexpected considering Justice Frankfurter's earlier statement, (TR-C-212) however, she does not testify to seeing anyone but her husband and Respondent depart the scene. Further, Mrs. Clem (who is now reconciled and was so reconciled on the day of her giving testimony) stated that her husband did not threaten to take her car until she wouldn't let him into her mother's home to see his son. Only at this time did he get mad, and go to his Aunt's house where he called and threatened to take

the car away. (TR-C-212) Mr. Clem's testimony is essentially in accord with this version. (TR-C-124,125) Mr. Weakley only mysteriously comes into the picture immediately after this. (TR-C-126) What did Mr. Clem plan to do with Mr. Weakley while visiting with his son in his wife's mother's house, or was he never really a matter of concern? Out of sight, out of mind.

This conclusion is further supported by Officer Burdette who in recounting the events, as best he could recall them, failed to mention a phantom witness of Mr. Clem's. (TR-C-202,203) When asked directly if Mr. Clem ever advised him of any witness being present, his answer was, "no sir." (TR-C-208)

Respondent suggests that the great weight of the evidence indicates that Mr. Weakley gave false testimony at Mr. Clem's suggestion at the trial. This being so, Mr. Clem's testimony is virtually worthless except where supported by neutral witnesses and that eliminates the allegation that Respondent entered Mr. Clem Sr.'s home uninvited. Mr. Clem's testimony is questionable anyway on this point in view of his cross examination:

Mr. Simpson: It was okay with you; is that right?

Mr. Clem: We was going to call the police, yeah, at that time. (TR-C-153)

* * * * *

Wherefore the only matter remaining at issue is whether giving common sense advise that anyone could give and others did give to the client of another, who either expressley waived the presence of his attorney for said "communication" or who by implication

waived his attorney's presence, or discharged his attorney for the time by implication, or became co-counsel with his attorney expressly or by implication, or represented himself *pro se* along with his attorney constitutes a breach of the Code of Professional Responsibility within the sections charged in the instant case.

The answer is obviously not, since it is the *client* who decides *when* to employ an attorney and *when* to discharge or waive the attorney's presence and Mr. Clem was warned by Respondent of his right to have "communications" go thru counsel and Mr. Clem intelligently elected to the contrary for the matters discussed and, therefore, the charges should be dismissed.

Counsel again reserves the right to present further argument under M.R.P. BV.15d as the Rule does not specify when argument under it is to be had.

Bruce W. Haupt
Respondent
8720 Georgia Avenue
Silver Spring, Maryland 20910
565-0808

IN THE MONTGOMERY COUNTY CIRCUIT COURT

MONTGOMERY COUNTY BAR ASSOCIATION, INCORPORATED,	)	
Petitioner,	)	Misc. Petition #5127
vs.	)	
BRUCE WEIDENOR HAUPTT,	)	
Respondent.	)	

DEPOSITION OF HARRY K. WOLPOFF, Esq.,

a witness of lawful age, taken on behalf of the Respondent in the above-entitled matter pending in the Montgomery County Circuit Court, before Craig L. Knowles, Notary Public in and for the State of Maryland, at 17 West Jefferson, Room 105, Rockville, Maryland, commencing at 10:10 a.m., Wednesday, August 27, 1975.

APPEARANCES:

REGINALD W. BOURS, III, Esq., Suite 301, 30 Court House Square, Rockville, Maryland; and THOMAS L. CRAVEN, Esq., 1010 Rockville Pike, Rockville, Maryland, appearing on behalf of Petitioner.

BRUCE W. HAUPT, Esq., 8720 Georgia Avenue, Silver Spring, Maryland, appearing in his own behalf as Respondent.

ALSO PRESENT:

FRANCIS J. FORD, Esq., appearing on behalf of Deponent.

Knowles & Winter Reporting, Inc.
303 Massachusetts Avenue, N.E.
Washington, D.C.
544-1800

MR. FORD: I would like the record to reflect that I am appearing on behalf of the witness and those other members of the grievance committee who have been subpoenaed to give their depositions today.

Prior to the commencement of the deposition, I spoke with Mr. Haupt and advised him that, inasmuch as the hearing in the matter of the complaint of Karen Hopkins was not transcribed, and since there was not a transcript of that hearing, I had no objection to the members of the grievance committee being deposed as to their recollection of any of the matters testified to by witnesses appearing at that hearing.

Based upon my review of the notice of deposition and the subpoenas issued in connection therewith, it appeared that perhaps the scope of the inquiry anticipated by Mr. Haupt was beyond that which I felt was proper. On that basis, we agreed to meet with Judge Ralph Shure in the Circuit Court, who is the duty judge today, and advised him of my position, and Mr. Haupt did likewise.

Specifically, I advised the court that in my view, the respondent, Mr. Haupt, did not have a right to inqure of the members of the grievance committee on any matter beyond their recollection of the matters testified

to in their presence by the witnesses at the Hopkins hearing.

Specifically, I advised the court that in my view the respondent was not entitled to inquire of the members of the committee any judgments made by them, their mental processes or any other matter that went into any recommendations that might have been made by the members of that committee on the grievance then before them.

The court advised both Mr. Haupt and myself and Mr. Bours, who is the attorney for the petitioner, Montgomery County Bar Association, that this position adopted by me would be sustained by the court and indicated to all of us that in his view the only legitimate area of inquiry in these depositions would be to inquire of the members of the committee recollection of the matters testified to by the respective witnesses.

So that with that preamble, I suppose we could commence the deposition of Mr. Wolpoff, unless Mr. Haupt wishes to add anything to what I have said for the record.

MR. HAUPT: Yes, Mr. Ford, I do wish for the record to note the Disciplinary Rule BV15(d) which notes bad faith, states, the provisions of the Section BV, Rule 604, Bad Faith, - Unjustified Proceeding, - Delay, apply to proceedings under this subtitle. It was my recollection that Judge Sure indicated that he was not aware of any former precedent where a grievance committee had been deposed by any respondent in a disciplinary proceeding. I am, likewise, unable to find any precedent in this area one way or the other. So it appears that this case may indeed set such a precedent

one way or the other for future members of the bar, present members of the bar that may come before a grievance committee in the state.

I would note and did note that it was my position that it would be impossible for the respondent to prove bad faith or unjustified proceedings if the respondent was not able to inquire into the general processes, mental processes, possibly, in the investigation that was conducted by the committee and why the committee believed certain things and how the committee responded.

It seems to me that the Rule BV 15(d) would otherwise simply be a token rule there for good appearance, but there also, beyond, perhaps, the ability of the respondent to bring himself or herself, as the case may be, within that rule. Of course, as we are all aware, any grievance proceeding has the right to claim immunity in my civil case or any such other type of action.

So, really, the only outcome which a respondent could expect under this proceeding would be payment of counsel's fees. Again, unless Mr. Bours has something he would want to note, I would be prepared to proceed.

* * * *

Whereupon,

HARRY K. WOLPOFF

a witness of lawful age, being first duly sworn by the Notary Public, was examined and testified as follows:

EXAMINATION ON BEHALF OF RESPONDENT

BY MR. HAUPT:

Q. Mr. Wolpoff, would you state your name and your current professional address for us, sir?

A. My name is Harry K. Wolpoff. My office address is 8757 Georgia Avenue, Silver Spring, Maryland, Suite 504.

Q. Directing your attention to a time earlier, I believe, in February of this year, did you have occasion to be chairman of the Montgomery County Bar Association Grievance Committee at that time?

A. Yes, I did.

Q. Did there come a period of time or perhaps more than one period of time, two occasions, where I, the respondent, appeared before you for the purpose of a grievance or grievances that had been filed?

A. That is correct.

Q. All right. The first of these matters was a grievance filed, I believe, by Judge Rubin, is that correct?

A. That is correct.

MR. BOURS: Objection, leading.

MR. HAUPT: I would note for the record that the Montgomery County Bar Association would have come under the old Article 35, Section 9, party deponent, and I would be permitted to lead the witness, and for that matter, impeach the witness or any agent, servant or employee of the party deponent. I don't think that it is really all that relevant.

BY MR. HAUPT:

Q. Now, that was a complaint filed by Karen Hopkins, was it not.

MR. CRAVEN: We object to any question that does not relate to any testimony before this grievance committee.

MR. HAUPT: We are getting to that. I think we are entitled to a preliminary lead in, unless Mr. Ford is going to instruct the witness not to answer.

MR. FORD: Are you waiting for something from me?

MR. HAUPT: Apparently not.

BY MR. HAUPT:

Q. Was that correct, that this did relate to Karen Hopkins, and it was, in effect, her complaint?

A. Judge Rubin filed a complaint in which he described one Karen Hopkins.

A. I trust that that complaint stated the basis of Karen Hopkins' complaint, is that correct?

MR. CRAVEN: We object. Petitioner objects to that question because it is not relating to a fact that was related to this witness in the proceeding or, in fact, at all.

(The court reporter read the pending question.)

A. Without having the actual physical document in front of me, I can't really remember the exact details of what it was.

BY MR. HAUPT:

Q. I see. What did you do with any records that were preserved by the committee?

MR. FORD: Objection. I would instruct the witness not to respond. Prior to the taking of the deposition we spoke our positions relative to the testimony to be elicited. It is again my position that the witness can be asked his recollection of any matters testified to by any of the parties appearing before the

grievance committee. I think we have, by your prior questioning, established the identity of the proceeding, that proceeding being a proceeding involving Karen Hopkins.

From this point on, unless the questions propounded to the witness concern what was testified to at that hearing, of which there was no transcript, I would object and instruct the witness not to answer.

(The objection to this question was sustained by Judge Shure subsequent to the taking of the deposition.)

* * * *

Q. All right. Was there any testimony that you can recall that was elicited at that former hearing that would have indicated that Karen Hopkins had been involved in any former threats to anyone?

A. I do believe that there was testimony that was on the record by yourself.

Q. Excuse me, there was no record.

A. Well, strike that, then. There was no record. There was testimony that you brought forth to the committee that Karen Hopkins had called you after one meeting that you had with her in which she threatened to cause some type of discomfort to you of some nature. Some type of a threat of that nature that you had. And there was supposedly someone else in the room at the same time that that threat was made, although I didn't hear any testimony from that particular person.

Mr. Rowan, I understand, handled that investigation. I am not certain right now whether he interviewed

the law clerk that was present at the time that you were threatened by her over the telephone or not.

Q. Would it have been the committee procedure to interview all parties involved?

MR. FORD: Objection. Instruct the witness not to answer.

(The objection to this question was sustained by Judge Shure subsequent to the taking of the deposition.)

MR. HAUPT: I assume for the same reasons you have already cited?

MR. FORD: Yes.

* * * *

Q. Prior to the certification, did your committee receive a letter indicating that Karen Hopkins had been involved in drug distribution at Perry High School?

MR. FORD: Objection. Instruct the witness not to answer.

(The objection to this question was sustained by Judge Shure subsequent to the taking of the deposition.)

* * * *

BY MR. HAUPT:

A. Was additional evidence received by the committee specifically, a letter sent to the committee by me indicating therein that Karen Hopkins had been involved in drug distribution at Perry High School?

MR. FORD: I would object and instruct him not to answer on the grounds that that question is not

elicited from this witness' recollection of the testimony taken at the hearing.

(The objection to this question was sustained by Judge Shure subsequent to the taking of the deposition.)

BY MR. HAUPT:

Q. Did the committee, either through its investigators or through you personally, Mr. Wolpoff, inquire into the social services, or the social services file of the complaining witness, Miss Hopkins?

BY MR. FORD: Objection, and instruct the witness not to answer.

(The objection to this question was sustained by Judge Shure subsequent to the taking of the deposition.)

BY MR. HAUPT:

Q. Did the committee, either through its investigators or through its independent members inquire into the existence or lack of existence of a police record of Miss Hopkins?

MR. FORD: Objection. Instruct the witness not to answer.

(The objection to this question was sustained by Judge Shure subsequent to the taking of the disposition.)

BY MR. HAUPT:

Q. During either the Hopkins – strike that.

During the second proceeding, do you recall whether there was any testimony offered on the respondent's possession of a handgun?

MR. FORD: Objection. It is my understanding that there was a transcript of the testimony offered at the second proceeding. If I am correct in that

assumption, then I would instruct the witness not to answer, since the evidence of what was testified to at that hearing is contained in the official transcript of that hearing.

MR. CRAVEN: Oh behalf of the petitioner, I would like to note that the respondent and the proponent of these questions was furnished by me a photocopy of the transcript of the proceedings regarding the second allegations some months ago.

MR. HAUPT: I would note for the record that I have received that transcript.

BY MR. HAUPT:

Q. With regard to the testimony that was elicited in that transcript and in that proceeding, specifically dealing with handguns, was that a subject matter that the committee considered relevant for the purpose of the investigation?

MR. FORD: Objection, and instruct the witness not to answer.

(The objection to this question was sustained by Judge Shure subsequent to the taking of the deposition.)

MR. HAUPT: I would at this point state for the purpose of this deposition that it appears that, due to the pre-existing conference that we have had in Judge Shure's chambers, and the contents of which have been recorded already as a result of Mr. Ford's summarization, that it appears that it would be pointless to proceed further with any of the members of the committee.

* * * *

MR. HAUPT: As Judge Shure indicated, any of the parties could request a ruling of the court. I would imagine that this whole proceeding would be pointless unless a ruling is given by the court. And, therefore, yes, I will request a ruling by the court. I cannot see for the purposes of that ruling inconveniencing six other members of the grievance committee, or myself or anyone else, for something that appears to be rather pointless in view of what the ruling will possibly be.

Sufficient questions have been asked to preserve this matter for review, I believe. And as I recall, sufficient instructions not to answer were given. Since Mr. Wolpoff was the chairman of the committee, it would seem to me that it would be rather pointless to depose any one other than the chairman.

* * * *

IN THE COURT OF APPEALS OF MARYLAND

MONTGOMERY COUNTY BAR ASSOCIATION, INC. *
*
v. *
*
BRUCE WIDENOR HAUPT *

Misc. Docket
(Subtitle BV)
No. 13, September Term, 1975

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Bruce Widenor Haupt notes an appeal of the failure to award attorneys fees, expenses and costs incidental to the litigation in the Juvenile Matter and the findings in the Clem matter from the final order of the Court of Appeals of Maryland, dated 15 March, 1976 and from the denial of Respondent's Petition for Clarification of same, dated 19 March, 1976.

This appeal is taken pursuant to 28 U.S.C. § 1257(2).

Bruce W. Haupt, Pro Se
Suite 505, Washington Building
1435 G Street, N.W.
Washington, D.C. 20005
783-7232

Filed in the Clerk's Office of the Court of Appeals of Maryland this 14th day of June, 1976.

IN THE COURT OF APPEALS OF MARYLAND

MONTGOMERY COUNTY BAR ASSOCIATION, INC.	+	
	+	Misc. Docket
v.	+	(Subtitle BV)
	+	No. 13, September
BRUCE WIDENOR HAUPT	+	Term, 1975

CERTIFICATE OF SERVICE RE: NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

I HEREBY CERTIFY that a copy of the foregoing was mailed this 14th day of June, 1976, by first class mail, postage prepaid, to Thomas Craven, Esq., attorney for the Montgomery County Bar Association, 1010 Rockville Pike, Rockville, Maryland 20852.

I do not consider the Attorney Grievance Commission of Maryland to be an essential party under Rule 10(4).

I hereby affirm that the contents of the foregoing are true to sthe best of my knowledge, information and belief.

/s/ Bruce W. Haupt
Bruce W. Haupt .
Suite 505, Washington Bldg.
1435 G Street, N.W.
Washington, D.C. 20005

Pro Se
As per Supreme Court Rule 33(3)(b)(c).

CONSTITUTIONAL, STATUTORY AND REGULATORY MATERIALS

Maryland Rules of Procedure (hereinafter abrevated M.R.P.)

M.R.P. BV10, Hearings.

"d. **Hearings** - Conducted as Civil Case. - The hearing of charges is governed by the same rules of law, evidence and procedure as are applicable to the trial of civil proceedings in equity. Factual findings shall be supported by clear and convincing evidence."

M.R.P. BV15. Costs.

"a. **General**. Except as provided in section b of this Rule, all court costs in proceedings under this Subtitle shall be paid by the State unless the Court of Appeals shall direct otherwise."

"d. **Bad Faith.** - The provisions of section b of Rule 604 (Bad Faith - Unjustified Proceeding - Delay) apply to proceedings under this Subtitle."

M.R.P., Rule 604 b. Bad Faith - Unjustified Proceeding - Delay.

"In an action or part of an action, if the court finds that any proceeding was had (1) in bad faith, (2) without substantial justification, or (3) for purposes of delay the court shall require the moving party to pay the adverse party the amount of costs thereof and the reasonable expenses incurred by the adverse party in opposing such proceeding, including reasonable attorneys' fees."

M.R.P., Rule 415. Deposition - Cost.

"a. **In Evidence.** The cost of a deposition admitted in evidence shall be taxed as part of the costs of the case, unless the court on motion shall disallow the

same or otherwise apportion the costs between the parties."

"b. **Not in Evidence.** It shall be discretionary with the court to tax as part of the costs of the case all or any part of the cost of any other deposition taken by any party to the action."

M.R.P., Rule 1230. Code of Professional Responsibility.

"The Code of Professional Responsibility of the American Bar Association, as set forth in Appendix F of the Maryland Rules, is hereby adopted."

M.R.P., Appendix F... Code of Professional Responsibility

DR 1-102 Misconduct (A) A lawyer shall not: (1) violate a Disciplinary Rule (2) Circumvent a Disciplinary Rule through actions of another. (3) Engage in illegal conduct involving moral turpitude. (4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. (5) Engage in conduct that is prejudicial to the administration of justice. (6) Engage in any other conduct that adversely reflects on his fitness to practice law.

DR 7-102 Representing a Client Within the Bounds of the Law. (A) In his representation of a client, a lawyer shall not: (8) Knowingly engage in other illegal conduct or conduct contrary to a Disciplinary Rule.

DR 7-104 Communicating With One of Adverse Interest. (A) During the course of his representation of a client a lawyer shall not: (1) Communicate or cause another to communicate on the subject of the representation with a party he knows to be represented by a lawyer in that matter unless he has the prior consent of the lawyer representing such other party or is authorized by law to do so.

Annotated Code of Maryland, Courts and Judicial Proceedings Subtitle,

§9-113. Adverse person or party. In a civil case, a party or an officer, director, or managing agent of a corporation, partnership, or association maybe called by the adverse party and interrogated as on cross-examination.

Maryland Constitution

Article IV, Section 18A. Powers and duties of Chief Judge of Court of Appeals; assignment of judges; rulemaking power of Court of Appeals. - .... The Court of Appeals from time to time shall make rules and regulations to revise the practice and procedure in and the administration of the appellate courts and in the other courts of this State, which shall have the force of law until rescinded, changed or modified by the Court of Appeals or otherwise by law. The power of courts other than the Court of Appeals to make rules of practice and procedure, or administrative rules, shall be subject to the rules and regulations prescribed by the Court of Appeals or otherwise by law.

Declaration of Rights, Article 5. Common law and statutes of England applicable; trial by jury; property derived under charter granted to Lord Baltimore. - That the Inhabitants of Maryland are entitled to the Common Law of England, and the trial by Jury, according to the course of that Law, and to the benefit of such of the English statutes as existed on the Fourth day of July, seventeen hundred and seventy-six; and which, by experience, have been found applicable to their local and other circumstances, and have been introduced, used and

practiced by the Courts of Law or Equity; and also of all Acts of Assembly in force on the first day of June, eighteen hundred and sixty-seven; except such as may have since expired, or may be inconsistent with the provisions of this Constitution; subject, nevertheless, to the revision of, and amendment or repeal by, the Legislature of this State. And the Inhabitants of Maryland are also entitled to all property derived to them from, or under the Charter granted by His Majesty Charles the First to Caecilius Calvert, Baron of Baltimore.